

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

NICHOLAS MARTIN on behalf of himself	)	
and others similarly situated,	)	
	)	
Plaintiff,	)	Case 1:10-cv-3494
	)	
v.	)	Judge Dow
	)	
CCH INCORPORATED,	)	Magistrate Judge Ashman
	)	
Defendant.	)	

**DEFENDANT’S MOTION FOR LEAVE TO FILE A SUR-REPLY IN OPPOSITION TO  
PLAINTIFF’S MOTION FOR RULE TO SHOW CAUSE AND FOR SANCTIONS**

NOW COMES Defendant CCH Incorporated (“CCH”), by and through its counsel, and submits this Motion for Leave to File a Sur-Reply in Opposition to Plaintiff’s Motion for Rule to Show Cause and for Sanctions, which is attached hereto as Exhibit A, and in support thereof, states as follows:

1. On October 13, 2011, Plaintiff filed a Motion for Rule to Show Cause and for Sanctions (“Motion”) asserting that CCH failed to preserve relevant evidence. Dkt. 89. On October 31, 2011, CCH filed a response establishing that CCH has not only preserved the categories of documents about which Plaintiff complained, but had produced them to Plaintiff in this litigation. Dkt. 99.

2. At the November 2, 2011 hearing on Plaintiff’s Motion, the Court stated that it did not understand Plaintiff’s Motion, and ordered Plaintiff to file a reply brief *specifically* identifying the documents that CCH has allegedly failed to preserve and the resulting harm to Plaintiff. *See* Nov. 2, 2011 Hearing Tr. at 2:17-19, 3:2-5, attached hereto as Exhibit B.

3. Accordingly, Plaintiff filed a reply brief on November 18, 2011 identifying three new categories of documents that CCH has allegedly failed to preserve. Dkt. 110.

4. To assist the Court in ruling on Plaintiff's Motion with respect to these newly-identified categories of documents, CCH respectfully requests leave of Court to file a short sur-reply. CCH's sur-reply is less than five pages long, and is limited to those issues newly raised in Plaintiff's Reply Brief.

WHEREFORE, CCH respectfully requests that this Court enter an order granting CCH leave to file the sur-reply attached hereto as Exhibit A, and awarding any further relief this Court deems just and proper.

Dated: November 29, 2011

Respectfully submitted,

CCH Incorporated

/s/ Sarah A. Zielinski

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#### **CERTIFICATE OF SERVICE**

I, Sarah A. Zielinski, hereby certify that on this 29<sup>th</sup> day of November, 2011, I filed the foregoing document and exhibits electronically through the Court's ECF system. Notice of this filing will be sent to all registered users through the ECF system.

/s/ Sarah A. Zielinski